

WORLD TRADE ORGANIZATION

GPA/30
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(99-4569)

REPORT (1999) OF THE COMMITTEE ON GOVERNMENT PROCUREMENT

I. GENERAL

1. This Report is submitted pursuant to Article XXIV:7(a) of the Agreement on Government Procurement, which requires the Committee to review annually the implementation and operation of the Agreement and to inform annually the General Council of developments during the periods covered by such reviews.

2. The Agreement on Government Procurement entered into force on 1 January 1996. The period covered in this Report is November 1998-October 1999, but the Report also reflects, where necessary, the work of the Committee up to November 1998 (GPA/8 and Add.1, GPA/19 and GPA/25). The Committee on Government Procurement held two meetings in 1999: on 23 February and 5 October 1999 (GPA/M/11 and 12).¹

3. The following WTO Members are Parties to the Agreement: Canada; the European Community and its fifteen member States; Hong Kong, China; Israel; Japan; Korea; Liechtenstein; the Kingdom of the Netherlands with respect to Aruba; Norway; Singapore; Switzerland; and the United States. Fourteen WTO Members have observer status: Argentina, Australia, Bulgaria, Chile, Colombia, Estonia², Iceland, the Kyrgyz Republic, Latvia, Mongolia, Panama, Poland, Slovenia and Turkey. Four non-WTO Members, Chinese Taipei, Croatia, Georgia and Lithuania, and three intergovernmental organizations, the IMF, the ITC and the OECD, also have observer status.

II. IMPLEMENTATION OF THE AGREEMENT

Modifications of Appendices to the Agreement

1. Article XXIV:6 of the Agreement requires Parties to notify rectifications of a purely formal nature or other modifications relating to Appendices I through IV, which set out the mutually agreed coverage provided under the Agreement. Consequential rectifications or modifications become effective once they are agreed to pursuant to the procedures under this Article. Since the 1998 Report of the Committee, modifications relating to their respective Appendices, in accordance with the procedures of Article XXIV:6, were made by the European Community (GPA/W/51/Add.2) with entry into force on 8 October 1998 (WT/Let/294), by Japan (GPA/W/78, 79 and 88) with entry into force respectively on 13 November 1998 (WT/Let/274), on 27 November 1998 (WT/Let/275), and on 8 August 1999 (WT/Let/308) and by Singapore (GPA/W/82) with entry into force on 19 March 1999 (WT/Let/297). Proposals for modifications relating to Appendix I have also been notified by Japan in documents GPA/W/91, 93, 94 and 98. With regard to the proposed modifications notified by Japan in document GPA/W/91, Canada, the European Community and the United States communicated their

¹ GPA/M/12 will be circulated shortly.

² Estonia will become a WTO Member as of 13 November 1999.

objection to the proposed modifications taking effect pending further consultations with Japan regarding the withdrawal of an entity from its Annex 3, Appendix I. Hong Kong, China and Switzerland also asked for further clarifications from Japan with regard to the proposed modification.

Loose-leaf system for Appendices

2. At its meeting of 4 June 1996, the Committee agreed to establish a loose-leaf system with legal effect to maintain up to date the Appendices to the Agreement. With a view to providing a starting point for the loose-leaf system, the Secretariat circulated in February 1997 a draft of the loose-leaf system of Appendices reflecting the Appendices attached to the Agreement as signed at Marrakesh and the subsequent rectifications, modifications and new concessions made under the procedures adopted by the Interim Committee and under the Agreement itself (GPA/W/35). This draft was subsequently updated incorporating all the modifications effective on 1 July 1999 (GPA/W/35/Rev.1) and circulated to Parties for comments concerning the accuracy and completeness of the consolidation of the Appendices. The loose-leaf system for Appendices to the Agreement will be certified by the Director-General in accordance with the normal procedures in respect of rectifications under WTO instruments. Subsequent modifications to the loose-leaf system will be made following the procedures agreed by the Committee (GPA/W/35/Rev.1, paragraph 4 and GPA/M/5, paragraph 20). In addition to being made available in hard copy form, the looseleaf system was circulated to Parties and other WTO Members in electronic form through the WTO Document Dissemination Facility. An up-to-date copy of the looseleaf system is also available to the general public through the government procurement site on the WTO Home Page on the Internet (<http://www.wto.org/wto/govt/loose.htm>). Any future new or replacement pages will be circulated in electronic as well as hard copy form.

Thresholds

3. In accordance with the Decision on Modalities for Notifying Threshold Figures in National Currencies (GPA/1, Annex 3), during the period under review, Korea notified threshold figures in its national currency for the period 1999-2000 (GPA/W/81).

Notification and review of national implementing legislation

4. Pursuant to the Decision on the Procedures for the Notification of National Implementing Legislation and the Checklist of Issues (GPA/1/Add.1), seven delegations – Canada; the European Community; Hong Kong, China; Korea; Norway; Switzerland; and the United States have notified their national implementing legislation including their responses to the Checklist of Issues (GPA/10, GPA/20, GPA/27, GPA/12/Rev.1, GPA/13, GPA/15 and Add.1 and GPA/23, respectively). At its meetings on 23 February and 5 October 1999, the Committee continued the review of the national implementing legislation, initiated in October 1998 (GPA/25), by taking up the legislation of Switzerland, the United States and Canada, in addition to taking up the outstanding points relating to the review of the national implementing legislation of the European Community and Korea. In accordance with the arrangements and the schedule for the review agreed by the Committee, the review was conducted on the basis of responses provided by the Parties being reviewed to written questions put by other Parties in advance of the review of the respective national legislation.

5. The Committee discussed the follow-up to Canada's offer, contained in its Appendix I, Annexes 2 and 3, to cover sub-central government entities and enterprises in all ten Provinces, on the basis of commitments received from the Provinces, with a final listing to be provided within 18 months after the conclusion of the Agreement. Canada's stated position since the entry into force of the Agreement, linking the tabling of its schedule at the sub-central level to achieving increased market access in sectors of priority interest to Canadian suppliers and improving security of market access through circumscribing the use of small business and other set-aside exceptions under the Agreement, remained unchanged. Some other Parties expressed their disappointment over the situation, stressed the need for Canada to honour its commitments and considered that the problems

raised by Canada with respect to expanded coverage of the Agreement could only be addressed once Canada had come forward with offers pursuant to its commitments in its Annexes 2 and 3. Canada has asserted that it did not undertake obligations regarding Annexes 2 and 3, and has reiterated that its coverage was to be based on commitments received from the Provinces. Canada has also asserted that, as no commitments have been received, it is under no obligation to put forward an offer under these Annexes.

Statistical reporting

6. Article XIX:5 requires Parties to collect and provide on an annual basis statistics on their procurements covered by the Agreement. During the period under review, Switzerland provided statistics for 1996 (GPA/21/Add.2), Norway for 1997 (GPA/22/Add.1) and Hong Kong, China for 1998 (GPA/29).

Consultations and dispute settlement

(i) United States – Measures affecting government procurement

7. In July 1997, the European Communities and Japan requested respectively consultations with the United States, pursuant to Article XXII of the Agreement on Government Procurement (GPA) and Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), regarding the Act Regulating State Contracts with Companies Doing Business with or in Burma (Myanmar) enacted by the Commonwealth of Massachusetts on 25 June 1996 (WT/DS88/1GPA/D2/1 and WT/DS88/2; WT/DS95/1-GPA/D3/1 and WT/DS95/2). On 21 October 1998, pursuant to the requests of the European Communities (WT/DS88/3 of 8 September 1998) and Japan (WT/DS95/3 of 8 September 1998), the DSB established a single panel in accordance with Article 9 of the DSU and with standard terms of reference pursuant to Article XXII:4 of the Agreement on Government Procurement (WT/DSB/M/49). The Panel was constituted on 6 January 1999. In a communication to the Chairman of the DSB, dated 10 February 1999, the Chairman of the Panel stated that, in the context of a United States court ruling barring the implementation of the measure at issue, the European Communities and Japan had requested the Panel to suspend its work in accordance with Article 12.12 of the DSU and that the Panel had agreed to this request (WT/DS88/5 and WT/DS95/5).

(ii) Korea – Measures affecting government procurement

8. In a communication dated 16 February 1999, the United States requested consultations with Korea pursuant to Article 4 of the DSU and Article XXII of the GPA (WT/DS163/1 and GPA/D4/1) with respect to certain procurement practices of the Korean Airport Construction Authority and other entities concerned with the procurement of airport construction in Korea. The European Community and Japan requested to join these consultations (WT/DS163/2 of 4 March 1999 and WT/DS163/3 of 9 March 1999). These requests were not accepted by Korea. Pursuant to the request by the United States, dated 11 May 1999 (WT/DS163/4), the DSB established a panel on 16 June 1999 in accordance with the provisions of Article 6 of the DSU and Article XXII of the GPA, with the standard terms of reference provided for in Article XXII:4 of the GPA (WT/DSB/M/64). The European Community participates as a third party in the Panel proceedings in relation to the complaint raised by the United States and Japan reserved its rights in this respect. The Panel was constituted on 30 August 1999 (WT/DS163/5).

Other matters raised in the Committee

9. During the period under review, the Committee considered the adoption of a declaration by Parties extending the benefits of the Agreement to all the least developed WTO Members.

Procedural matters

10. In accordance with its Decision on Procedures for the Circulation and Derestriction of Documents (GPA/1/Add.2), Parties are considering a proposal for the derestriction of the documents listed in document GPA/W/92 as of 20 November 1999.

Government procurement site at the WTO home page

11. A site on government procurement was established at the WTO home page on the Internet in order to provide information to the public at large on WTO activities relating to the area of government procurement. The section of the site on the Agreement on Government Procurement includes an overview, the text of the Agreement, an up-to-date copy of the loose-leaf system for Appendices, a list of Parties and observers, a table of thresholds of individual Parties and notifications of threshold figures as expressed in national currencies, information on the work of the Committee (decisions of the Committee on procedural matters, notifications of national implementing legislation, annual report to the General Council), statistics provided under Article XIX:5 and information on dispute settlement. Other sections on this site relate to the activities of the Working Group on Transparency in Government Procurement and of the Working Party on GATS Rules. Moreover, hyperlinks have been established with international and national websites containing information on government procurement. The site address is <http://www.wto.org/wto/govt/govt.htm>.

III. ACCESSIONS

12. Iceland applied for accession to the Agreement on 22 June 1998. During the period under review, Iceland carried out bilateral consultations with interested Parties on the basis of its draft offer (GPA/W/73). A communication received from Iceland containing responses to questions put to Iceland in connection with its accession and information on national legislation on government procurement will be made available to Parties.

13. In accordance with a commitment undertaken by Panama in the Report of the Working Party on the Accession of Panama to the WTO (WT/ACC/PAN/19, paragraphs 68 and 116 and Protocol, Part I, paragraph 2), Panama applied for accession to the Agreement and tabled an initial offer on 24 June 1997 (GPA/W/53 and GPA/SPEC/3). During the period under review, Panama pursued the bilateral consultations with interested Parties on the basis of a revised offer submitted on 10 December 1998 (GPA/SPEC/3/Rev.1).

14. Chinese Taipei applied for accession to the Agreement in June 1994 (GPA/IC/5) and submitted a draft offer which was subsequently revised on 19 March 1997 (GPA/SPEC/1/Rev.1).

15. In accordance with a commitment undertaken by the Kyrgyz Republic in the Report of the Working Party on the Accession of the Kyrgyz Republic to the WTO (WT/ACC/KGZ/26, paragraph 120), the Kyrgyz Republic applied for accession to the Agreement and tabled an initial offer on 11 May 1999 (GPA/SPEC/4).

16. In accordance with a commitment undertaken by Latvia in the Report of the Working Party on the Accession of Latvia to the WTO (WT/ACC/LVA/32, paragraph 99), Latvia applied for accession to the Agreement and tabled an initial offer on 16 June 1999 (GPA/SPEC/5). Information on Latvia's national legislation on government procurement was made available to Parties in document GPA/28.

17. During the period under review, the Committee discussed streamlining the overall process of accessions. At its request, the Secretariat drew up, for the consideration of the Committee, a draft Checklist of Issues that the acceding countries could use in providing information on the main features of their national legislation and procurement regimes. The Committee has requested the Secretariat to prepare a draft indicative time-frame for the accession proceedings.

IV. NEGOTIATIONS UNDER ARTICLE XXIV:7

18. Article XXIV:7(b) and (c) of the Agreement calls on the Parties, not later than the end of the third year from the date of its entry into force, to undertake further negotiations, with a view to improving the Agreement and achieving the greatest possible extension of its coverage among all Parties and eliminating any remaining discriminatory measures and practices. As stated in its 1996 Report to the General Council, the Committee agreed to undertake an early review which was initiated in February 1997 in informal consultations, with an examination of modalities. This review has covered, in particular, the following elements: simplification and improvement of the Agreement, including, where appropriate, adaptation to advances in the area of information technology; statistical reporting; expansion of the coverage of the Agreement; and elimination of discriminatory measures and practices which distort open procurement. An objective of the negotiations under Article XXIV:7 is the expansion of the membership of the Agreement by making it more accessible to nonParties. In this connection, a communication was sent by the Chairman of the Committee to the WTO Members, drawing their attention, as well as the attention of governments which are in the process of acceding to the WTO, to this work and inviting them to participate as observers in the meetings of the Committee (WT/L/206). During the period covered by this report, Parties pursued their consultations in six informal meetings held between December 1998 and October 1999 on the basis of an informal Checklist of Issues (the latest revision of which was circulated as Job No. 5189) and an informal note reflecting the draft texts of the modifications to the Articles of the Agreement proposed by various Parties side-by-side with the text of the Agreement (circulated as Job No. 5713).

19. Parties have also considered the timetable for the completion of the negotiations and the overall work programme that should be envisaged within that time-frame. There is agreement that good progress has been made on improving the text of the Agreement, that the momentum of the work needs to be maintained and that all three elements need to be covered. Parties will revert to this matter at their next meeting, to be held in March 2000. At that time, Parties will also focus on: framework and similar types of contracts, statistical reporting and the Article-by-Article review of the Agreement. In addition, Parties will continue monitoring progress in the elimination of discriminatory measures.
